

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

LARRY GAPEN,

Petitioner, : Case No. 3:08-cv-280

- VS -

District Judge Walter Herbert Rice  
Magistrate Judge Michael R. Merz

DAVID BOBBY, Warden,

Respondent. :

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**DECISION AND ORDER DENYING MOTION TO STRIKE**

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This case is before the Court on the Warden's Motion to Strike (Doc. No. 149) Petitioner's Motion for Leave to File a Third Amended Petition (Doc. No. 148).

The Court agrees with Respondent's analysis that Fed. R. Civ. P. 6 does not apply to extend the time for performing an act from Sunday to the following Monday when a court sets Sunday as the specific date. Indeed, the undersigned has on occasion expressly and intentionally set matters for Sunday, often when needed to coerce recalcitrant deponents into being reasonable about their availability. But that is not what happened here. The undersigned chose July 1<sup>st</sup> simply because it was an upcoming beginning of a month, a convenient date for planning purposes, and not to impose a Sunday-filing deadline.

Of course, Petitioner's counsel were not free to disregard the set date. They could have avoided working on Sunday to comply with it by completing the Motion on Saturday or by asking for a one-day extension. Nevertheless, the intervening time causes no prejudice to the

Warden.

Accordingly, the Court *sua sponte* extends the Petitioner's time to file his Motion for Leave to File a Third Amended Petition to and including July 2, 2012. Respondent's Motion to Strike is accordingly denied.

July 3, 2012.

*s/ Michael R. Merz*  
United States Magistrate Judge